



**CONTRA COSTA
CLEAN WATER
PROGRAM**

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August 23, 2010

Ms. Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Subject: Tentative Order
NPDES Permit No. CA S083313

Stormwater NPDES Permit for eastern portions of Contra Costa County and the Contra Costa County Flood Control and Water Conservation District and for the Cities of Antioch, Brentwood, and Oakley

Dear Ms. Creedon,

Thank you, and we extend our thanks to Diana Messina and Kim Schwab of your staff, for communicating with us in advance of posting the Tentative Order on July 23. The discussions were friendly and productive.

Shared Goals, but Inadequate Coordination of Two Permits

We share Region 5 staff's wish to craft a permit that is similar to the Region 2 Municipal Regional Permit (MRP), while allowing for differences in Basin Plan requirements and TMDLs. In particular, we support the intention, stated in Finding 2 of the Tentative Order, to produce a permit which is "similar in nature to the MRP" and "provides an inter-region collaborative approach." We appreciate the acknowledgement in Finding 3 that the permittees wish to "continue participating in the CCCWP and wish to coordinate the permit requirements of the two Regional Water Boards so that implementation of individual activities, and collective activities through the CCCWP, including funding and budgeting of those activities be as efficient and effective as possible." We also endorse the following commitment in Finding 4: "The Central Valley Water Board will coordinate with the San Francisco Bay Water Board, as appropriate, to provide consistency with the determination of compliance of similar permit requirements and deliverables."

We support the portions of the Tentative Order that emulate the MRP with regard to tasks that must be performed by the permittees individually. Accordingly, we support the following Provisions in whole:

- Provision C.2, Municipal Operations
- Provision C.4, Commercial and Industrial Site Controls
- Provision C.5, Illicit Discharge Detection and Elimination
- Provision C.6, Construction Site Controls
- Provision C.10, Trash Load Reduction
- Provision C.12, Exempted and Conditionally Exempted Discharges

The following Provisions include tasks to be implemented collectively by the permittees and require inter-regional coordination:

- Provision C.3, New Development and Redevelopment
- Provision C.7, Public Information and Outreach
- Provision C.8, Water Quality Monitoring
- Provision C.9, Pesticides Toxicity Control
- Provision C.11, Total Mercury and Methylmercury Control Program

Of these, Provisions C.3, C.8, and C.11, as written in the Tentative Order, place unacceptable and disproportionate requirements on the permittees.

Disproportionate Burden and Other Unintended Negative Consequences

Unfortunately, not enough time was allowed to coordinate between the two permits. As a result, the Tentative Order—244 pages of single-spaced text—contains provisions that place a huge economic burden on the five permittees, a burden that is entirely disproportionate compared to the effort required of the MRP's 76 Bay Area permittees.

Some of the provisions will likely disrupt long-term partnerships and ongoing collaborative efforts in the San Francisco Bay Region and will result in duplication and misspent resources. Worse, the provisions tend to undermine the collaborative partnership among the 21 agencies represented by the Contra Costa Clean Water Program.

To put the burden in perspective, note the cities of Antioch, Brentwood, and Oakley, and the unincorporated areas within eastern Contra Costa County, are comparable in population to many municipalities regulated under the statewide Phase II municipal stormwater NPDES permit. They have been able to implement Phase I programs because of their alliance with the Region 2 permittees in the Contra Costa Clean Water Program.

Because of the lack of coordination between the MRP and the Tentative Order, five Region 5 permittees (with a total population of about 200,000) would have to

mount collaborative efforts comparable to those that are shared in various ways among 76 Region 2 permittees (with a combined population over 5.2 million) under the MRP.

The burden is even more disproportionate when compared to requirements imposed on other Phase I and Phase II municipal stormwater dischargers within Region 5 and elsewhere in California.

This unreasonable and disproportionate burden—and the lack of sufficient coordination between the MRP and the Tentative Order—raise significant issues of statewide consistency.

We believe these consequences are as unintended as they are unnecessary, and can be resolved by coordinating the various Tentative Order provisions requiring collaborative monitoring and research with similar or identical provisions in Region 2's MRP.

Inadequate Time to Coordinate Two Permits and to Prepare Comments

Only 30 calendar days (25 working days) were allowed for the preparation of proposed comments and other revisions. This period was (inadvertently) set in the middle of summer vacations, with our agencies short-staffed due to recent layoffs and remaining staff under furlough requirements, and with annual reports to your Board coming due in September. It was impossible, within this time frame and under these circumstances, to coordinate among the 5 permittees subject to this permit, with the 76 permittees subject to the MRP, with Region 2 staff, with regional programs including the San Francisco Bay Regional Monitoring Program and the Regional Monitoring Collaborative, and with Region 5 staff, including staff members primarily responsible for implementation of the Delta Methylmercury TMDL.

We cannot, Region 5 staff cannot, and the Region 5 Board cannot fairly anticipate the costs, benefits, and consequences of this Order without this coordination. We earnestly and respectfully request an extension of time to coordinate with these entities and to work with your staff to identify appropriate changes to the Tentative Order.

We acknowledge this extension of time would require a consequent delay before the Board reissues a municipal stormwater permit to the five permittees. The Board should note this delay would be of no consequence to the implementation of the permittees' stormwater pollution prevention efforts. The cities of Antioch, Oakley, and Brentwood have already committed to implementing the requirements of the MRP consistent with other municipalities in Contra Costa. The County and

the Contra Costa Flood Control and Conservation District will continue to implement the same policies throughout the Region 2 and Region 5 portions of their jurisdictions.

Summary of Issues to Be Coordinated and Resolved

The attached tabulated comments detail our preferred way of coordinating the two permits. However, we anticipate additional consideration, review, and discussion will be required to achieve consensus on how to coordinate this permit with the MRP.

Here is a summary of issues, listed in rough order of costs and negative impacts to the permittees' pollution-prevention programs:

Provision C.8, Water Quality Monitoring.

Tentative Order Provision C.8.b. requires the five permittees to conduct a host of water-quality monitoring and studies annually in Marsh Creek. Following a detailed study of monitoring costs, we estimate the total cost of implementing this provision at \$300,000 - 400,000 each year during the permit period. This is radically different, and more burdensome, than the parallel MRP provision. Under that MRP provision, all 76 permittees (combined population 5.2 million) share the costs of monitoring six creek locations annually. The six creek locations are rotated among a total of 50 creek locations. We estimate the cost of the parallel MRP provision to be \$2,000,000 per year. Under the Tentative Order, the per capita cost to Region 5 Contra Costa permittees (combined population 200,000) is *more than four times the per capita cost* to permittees under the parallel MRP provision.

We request the two permits be coordinated so that Marsh Creek is included in inter-regional monitoring, allowing the costs can be spread equitably as they are under the MRP.

Tentative Order Provision C.8.c.i requires a stressor/source identification if triggered by results from the monitoring under Provision C.8.b. This magnifies the inequity represented by Provision C.8.b.

Tentative Order Provision C.8.c.ii. requires the five permittees (combined population 200,000) to investigate the effectiveness of one Best Management Practice for stormwater treatment or hydrograph modification control. The parallel provision in the MRP requires one such study be performed by the 18 Region 2 Contra Costa permittees (combined population 850,000). The per capita cost to Region 5 Contra Costa permittees is *more than four times the per capita cost* under the parallel MRP provision.

We request the two permits be coordinated so that the Contra Costa Clean Water Program may conduct one study or investigation that meets the requirements of both permits, which is consistent with the level of effort required of other Bay Area stormwater programs.

Tentative Order Provision C.8.d. requires the five permittees to conduct monitoring for mercury, pesticides, and toxicity in Marsh Creek to determine long-term trends in pollutant concentrations and toxicity in receiving waters and sediment. We estimate this would require \$150,000 - \$200,000 to implement. This is more than *four times the per capita cost* of the parallel provision in the MRP.

We request the two permits be coordinated so that the East Contra Costa permittees may participate with Region 2 permittees in an alternative monitoring arrangement. That arrangement—currently called the Small Tributaries Loading Strategy (STLS)—is specifically authorized by the MRP and is currently being planned with Region 2 staff participation. Additional time is required for coordination so we can ensure Marsh Creek is included in the STLS. This would provide better data, at lower cost, than what is prescribed in the Tentative Order.

Provision C.11, Total Mercury and Methylmercury Control Program

Tentative Order Provision C.11.d requires the permittees to implement and jointly evaluate ways to enhance mercury load reduction benefits of municipal maintenance activities that remove or manage sediment. The task envisions management practices will be implemented at the pilot scale in one drainage. This represents *more than five times the per capita cost* of the parallel provision in the MRP, which specifies five permit drainages throughout Region 2. We request the two permits be coordinated so that the Contra Costa Clean Water Program can satisfy the requirements of both permits through fair-share participation in the regional program now being developed to implement the MRP.

Tentative Order Provision C.11.i. specifies a Methylmercury Exposure Reduction Program to be implemented by the permittees, including collaboration with public health agencies to develop a suitable strategy. The parallel provision in the MRP has similar requirements. The provisions in both permits implement the same relevant portions of State Water Board Resolution 2005-0060.

We request the two permits be coordinated so that the Contra Costa Clean Water Program can meet the requirements of both permits (and the intent of the State Board resolution) through participation in a single program, which would extend countywide and would include collaboration with Contra Costa Health Services. The Contra Costa Clean Water Program is part of a regional effort that has secured Federal grant funding for implementation of the MRP Provision C.11 requirements noted above. The Program wishes to participate in that grant-funded effort as a representative of all of its 21 agencies, not just those in Region 2.

Provision C.3, New Development and Redevelopment

Tentative Order Provision C.3 requires a number of research studies. Identical studies are already mandated by parallel provisions in the MRP. We request the two permits be coordinated so that the five permittees can continue their current participation in the Region 2 studies already underway. This would be better, in our opinion, than having parallel submittals and parallel public review processes in Region 5 and Region 2, as is proposed in the Tentative Order.

Provision C.3.b.iii. requires the five permittees (combined population about 200,000) to complete one pilot green street project that incorporates LID techniques for site design and treatment. The parallel provision in the MRP requires the 76 Region 2 permittees (population 5.2 million) to complete ten pilot green streets projects. Based on green streets projects of equal size and complexity, the cost to the five Region 5 Contra Costa permittees is *more than two and a half times the per capita cost* of the parallel provision in the MRP. We request the two permits be coordinated so that the permittees can continue their participation in the inter-regional green streets study already underway and report the results to your Board for consideration and appropriate action.

Provision C.3.c.i.(2)(b)(iv) requires the five permittees submit to your Board a report on the criteria and procedures the permittees will employ to determine when harvesting and reuse, infiltration, or evapotranspiration is feasible and infeasible at a Regulated Project site. The parallel provision in the MRP requires a report of identical description be submitted to the Region 2 Board. We request the two permits be coordinated so that the Contra Costa Clean Water Program may continue its current participation in preparing a single report, which would be reviewed by the Region 2 and Region 5 Boards in a coordinated process, including public review.

Provision C.3.c.i.(2)(b)(v) requires the five permittees submit to your Board a report on their experience determining infeasibility of harvesting and re-use, infiltration, or evapotranspiration at Regulated Project sites. The parallel provision in the MRP requires a report of identical description be submitted to the Region 2 Board. We request the two permits be coordinated so that a single report is prepared and the Region 5 Board has the benefit of information and comparison of experience by 81 municipalities, rather than just the five permittees.

Provision C.3.c.i.(2)(b)(vi) requires the five permittees to submit, for your Board's approval, a proposed set of model biotreatment soil media specifications and soil infiltration testing methods. The parallel provision in the MRP requires a report of identical description be submitted for approval by the Region 2 Board. We request that the two permits be coordinated so that the permittees may continue their current participation in the preparation of a single inter-regional report and the

review of that report is coordinated between the two Boards in such a way as to ensure consistency of the specifications between the two Regions.

Provision C.3.c.i.(2)(b)(vii) requires the five permittees to submit, for your Board's approval, proposed minimum specifications for green roofs installed to meet stormwater treatment requirements. The parallel provision in the MRP requires a report of identical description be submitted to the Region 2 Board. We request the two permits be coordinated so the permittees may continue their current participation in the preparation of a single inter-regional report and the review of that report is coordinated between the two Boards in such a way as to ensure consistency of the specifications between the two regions.

Provision C.3.e.ii.(2) requires the five permittees to submit a proposal to your Board for "LID treatment reduction credits" that would allow non-LID treatment to be applied to a portion of the runoff from certain types of development projects. Once approved by your Board, these "LID treatment reduction credits" could be applied to these special projects within the permittees' jurisdiction. The parallel provision in the MRP requires a report of identical description be submitted to the Region 2 Board. LID treatment reduction credits approved by Region 2's Board would be applicable in Region 2. The five permittees are already participating in preparation of the proposal for submittal to the Region 2 Board. We request the two permits be coordinated, the public review process be coordinated, and the Board actions be coordinated so as to ensure consistency of the "LID treatment reduction credits" between the two regions.

Coordination of Two Permits and Statewide Consistency

In summary, we reiterate our concurrence with your objective to craft a permit that is similar to the Region 2 Municipal Regional Permit (MRP), while allowing for differences in Basin Plan requirements and TMDLs. Unfortunately, insufficient time was allotted to consider the consequences of having permits issued by two Boards mandate similar or identical collective efforts by groups of permittees spanning two Regions.

The well-intentioned, but hasty, effort to place similar requirements on Contra Costa Region 5 permittees as currently exist for Region 2 permittees backfired. The Tentative Order contains provisions which inequitably assign very different levels of effort for Contra Costa Region 5 permittees than for nearly adjacent Contra Costa municipalities in Region 2. Further, the Tentative Order would establish separate, parallel public review and Board decision-making processes on identical issues between the two Regions, which will create unnecessary and wasteful duplication of effort and/or policies that are inconsistent between the two Regions. That would be especially burdensome for Contra Costa permittees, as

our currently consistent countywide Program would be required to implement policies in East Contra Costa County that are different from those in Central and West Contra Costa County.

We are confident that allowing reasonable time for further discussions among your staff, permittee representatives including the Contra Costa Clean Water Program, and other interested parties would result in a permit that meets your objectives and avoids the serious flaws of this Tentative Order. We request Board consideration of the Tentative Order be postponed while these discussions take place.

On behalf of the permittees, thank you for the opportunity to comment.

Sincerely,



Tom Dalziel, Interim Program Manager
Contra Costa Clean Water Program

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Attachment

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